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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY SAMUEL YOUNT,

Defendant and Appellant.

A133179

(Sonoma County
Super. Ct. No. SCR30102)

Defendant Larry Yount appeals from a final judgment after the denial of a motion to reduce a felony conviction to a misdemeanor under Penal Code¹ section 17, subdivision (b), as is authorized by California Rules of Court, Rule 8.304, subdivision (b). No finding of probable cause for the appeal was made by the trial court and no application of a finding was made by defendant. Appellate counsel has reviewed the file in this case and determined there is no meritorious issues to raise on appeal. He has complied with the relevant case authorities. *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436. Defendant was notified of his right to file a supplemental brief, but has not done so. Upon independent review of the record, we conclude no arguable issues are presented for review, and affirm the judgment.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On October 1, 2001, defendant entered a guilty plea to a felony violation of battery with serious bodily injury (§ 243, subd. (d)). On November 30, 2001, the court

¹ All subsequent statutory references are to the Penal Code.

suspended imposition of sentence and placed defendant on formal probation for three years with several conditions. On July 19, 2011, defendant filed a motion to dismiss the case pursuant to section 1203.4 and to reduce the felony conviction to a misdemeanor under section 17, subdivision (b). The district attorney opposed the reduction of the felony to a misdemeanor with a written motion.

At the hearing on September 1, 2011, the trial court granted defendant's motion to dismiss the case pursuant to section 1203.4. However, the court denied the motion to reduce the conviction to a misdemeanor. The court announced this decision at the hearing: "The two important things that I look at is the nature of the offense, what occurred, and his conduct since then. Obviously, I agree with [defense counsel]. I have no reason to believe that [defendant] hasn't been law abiding. I have to assume that he has been. But after I read the preliminary hearing transcript, I'm in agreement with the prosecutor, that this is not a case where I will exercise my discretion in his favor on this. And I will expunge, but not reduce the charge to a misdemeanor."

This case involves a dispute between neighbors that took place on September 11, 2000. In the evening, the defendant confronted the victim regarding alleged noise from the children of the victim in their apartment. Defendant hit the victim six times in the face and then swung a baseball bat at the victim. The blow with the bat was to the head. Defendant then grabbed the victim by the head and rammed him into a concrete wall. The victim sustained a broken nose, two black eyes, a lacerated lip requiring six stitches, and a jaw injury still needing medical attention at the time of the preliminary hearing.

DISCUSSION

In this matter, we are asked to review the exercise of discretion by the trial court. The original conviction was for a felony violation of section 243, subdivision (d), battery with serious bodily injury. The facts detailed above support the finding. At the hearing on the motion to expunge and reduce to a misdemeanor, the superior court judge reviewed the transcript of the preliminary hearing and after doing so, expressed sound reasons for not exercising his discretion to reduce. This determination was focused on the facts of the case and the specific conduct of the defendant. It demonstrates

“ ‘reasoned consideration,’ ” and we will not disturb it. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 980, disapproved on other grounds in *People v. Williams* (2005) 35 Cal.4th 817, 832.)

DISPOSITION

We affirm the judgment.

Dondero, J.

We concur:

Marchiano, P. J.

Margulies, J.